

THE HONORABLE BENJAMIN SETTLE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CLYDE RAY SPENCER,

Plaintiff,

v.

DETECTIVE SHARON KRAUSE and
SERGEANT MICHAEL DAVIDSON

Defendants.

NO. C11 5424 BHS

**DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S
OBJECTIONS TO DECLARATION
OF SHARON KRAUSE**

**NOTE FOR CONSIDERATION:
Thursday, January 2, 2014
(Trial Date: January 7, 2014)**

Defendants Sharon Krause and Michael Davidson (hereafter "defendants") hereby move to strike what is misleadingly labeled Plaintiff's Objections to Declaration of Sharon Krause for Motion in Limine Issues Raised by the Court (Dkt. 231 - hereafter "Plaintiff's Objection"). Although labeled "objections," the pleading is actually a thinly veiled reply brief with more argument against admission of evidence regarding plaintiff's reported rape of Rhonda Short. Pursuant to the Court's Order Setting Jury Trial and Pretrial Dates (Dkt. 161), Motions in Limine had to be filed by December 2, 2013. This Order further directed that "[n]o reply papers shall be filed." *Id.*, p. 1, ln. 25. When the Court requested a declaration from Sharon Krause at the pretrial conference there was no request for

**DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' OBJECTIONS TO
DECLARATION OF SHARON KRAUSE - 1**
Cause No: C11-5424 BHS

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1 additional briefing or argument, and none was provided by defendants when the
 2 Declaration of Sharon Krause for Motion in Limine Issues Raised by the Court (Dkt. 226)
 3 was filed. Consequently, Plaintiff's Objection should be stricken.

4 In the event Plaintiff's Objection is not stricken, defendants submit that it does not
 5 establish the inadmissibility of the Rhonda Short evidence under FRE 403 due to unfair
 6 prejudice to plaintiff outweighing probative value. If anything, it would be unfairly
 7 prejudicial to defendants to preclude Krause from testifying to what she knew about the
 8 reported rape and what impact it had on her thought process, given the importance of the
 9 issue of the reasonableness of her belief in plaintiff's guilt or innocence for the rape and
 10 molestation of the children involved in this case. Also, admission of this evidence would
 11 not involve a time-consuming or confusing "mini-trial," with multiple additional witnesses
 12 being called to prove whether plaintiff was guilty of raping Rhonda Short. Rather, the
 13 evidence would be limited to the extent of defendant Krause's knowledge of the Rhonda
 14 Short incident, and plaintiff would be able to raise all of the points raised in Plaintiff's
 15 Objection upon cross-examination of Krause and possibly others at trial.

16 Based upon the foregoing, defendants respectfully request that Plaintiff's Objection
 17 be stricken.

18 DATED this 2nd day of January, 2014.

19 /s/ Guy Bogdanovich

20 /s/ Jeffrey A. O. Freimund

21
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States of America that on this 2nd day of January, 2014, I electronically filed Defendants' Motion to Strike Plaintiff's Objections to Declaration of Sharon Krause for Motion in Limine Issues Rasied by the Court, and a Proposed Order Granting Motion to Strike Plaintiff's Objections to Declaration of Sharon Krause, with the Clerk of the Court using the CM/ECF system, who will send notification of such filing to the following parties:

Plaintiff Clyde Spencer and Attorneys

dhjohnson43@aol.com
kathleen.zellner@gmail.com
dandavies@dwt.com

DATED this 2nd day of January, 2014 at Tumwater, Washington.

/s/ Marry Marze